IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10682 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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R M DOSHI
Versus
SUNENA TOMAR, IAS AND OTHERS

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Appearance :
MR NS KARIEL for the Petitioner
MR JR NANAVATI for the Respondents

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21-22/03/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged the order dated 07.12.1998 by which, he was dismissed from service.

2. Facts leading to the present petition are as follows:

The petitioner, at the relevant time, was discharging his duties as City Engineer of Jamnagar Municipal Corporation. For certain execution of work and construction of roads within the Municipal Corporation area, it was found that the petitioner had committed certain irregularities. A charge sheet, therefore, came to be issued against him on 15.01.1993. With respect to the allegations made against the petitioner in the said charge sheet, a detailed note will be taken of at a later stage. Suffice it to say that the petitioner did not agree to the charges leveled against him. A Departmental Inquiry was, therefore, conducted against him. During the course of the inquiry, the respondents examined two witnesses in support of the charges. One Shri Unnakrishna Pillai, Deputy Engineer of the Municipal Corporation was examined as a witness who was cross examined by the petitioner at length. Respondents also examined one Shri Vajshi Devabhai Gojiya, Junior Engineer of the Municipal Corporation as a witness. He was also cross examined by the petitioner at length.

Upon conclusion of the oral inquiry, the Inquiry Officer ('IO', for short) submitted his report dated 06.10.1995. A copy of the IO's report was made available

to the petitioner calling for his representation. Report of the IO was supplied to the petitioner along with notice dated 02.09.1998 why major penalty as provided under Rule 6 of the Gujarat Civil Services (Disciplinary and Appeal) Rules, 1971 should not be imposed upon him.

The petitioner responded to the said show cause notice by making a detailed representation dated 05.12.1998. The Commissioner of the Municipal Corporation passed impugned order on 07.12.1998 by which the petitioner was ordered to be dismissed from service. It is this order of his dismissal that the petitioner has challenged in the present petition.

3. Insofar as the allegations against the petitioner are concerned, in the charge sheet dated 15.01.1993, three charges were leveled against him. These three charges, though have slightly different facets, they all overlap on some aspect or the other. In the nutshell, the allegations against the petitioner were that while discharging his duties as the City Engineer, he had taken certain steps with respect to certain construction of road in T.P. Scheme Nos.1 and 2 of the Jamnagar city. He had facilitated the contractor Shri Narendra Prabhulal Chauhan to abandon the work half way. Since the said

contractor had filled a tender quoting his price at 9% below the tender amount, it is sought to be suggested that the contractor was not able to execute the work at the quoted price since he could not afford to do the work at that rate. He, therefore, wanted to get out of his commitment on some pretext or the other. The petitioner enabled the said contractor to get out of his commitment by reporting to the authorities that, delay in completion of the work contract was on account of water logging during monsoon, on account of heavy traffic, on account of continuation of the work of Telephone Department and on account of shortage of diesel. He has also suggested through note that on account of encroachment on the road site, it is not possible to execute the work in question. He had, accordingly, recommended releaving the contractor of his responsibility.

It was further alleged that the same work was entrusted to the contractor who was awarded the contractors for Zone A and B of the city which was quoted at 22% higher than that tender estimate. It was, thus, sought to be suggested that on one hand by releaving the erstwhile contractor Shri Narendra Prabhulal Chauhan from his responsibility of completing the work in question at the agreed rate which was 9% lower than the tender

estimate and entrusting the same work to other contractor who was assigned task of undertaking work in Zone A and B of the city, the petitioner caused an additional burden of expenditure of Rs.2,54,025=66 to the Corporation. According to the charge sheet, thus, the petitioner caused the said loss to the department on account of his irregularities. This in the nutshell is the charge against the petitioner.

4. Learned advocate Shri Nikhil S.Kariel for the petitioner made detailed submissions with respect to the legality of the impugned order.

5. By taking me through the evidence on record in the form of oral statements of the witnesses, the conclusions of the IO with respect to the allegations made against the petitioner and the findings of the Authority, he submitted that the charges against the petitioner could not have been held to be proved.

He pointed out that none of the allegations made against the petitioner have been established. He submitted that the witnesses in their oral depositions before the IO did not support the case of the department. He pointed out that the witnesses in no unclear terms

stated that there was no loss caused to the Corporation. He drew my attention to the answers given by the witnesses to various questions put by the delinquent officer based on which, it was contended before the Court that there was no evidence against the petitioner of having caused any loss to the Corporation.

In this regard, it was further contended that the IO himself found that several elements of the charge against the petitioner are not proved. It was contended that the charges could not have been further bifurcated into sub-charges when the charge sheet itself did not make any such distinction. He submitted that when the IO found that certain essential elements of charges are not proved, he ought to have held that the petitioner has not committed any misconduct and none of the charges could have been held to be proved.

He further contended that the petitioner was in charge of the post in question, i.e. of City Engineer only from 06.04.1991 till 21.12.1991. He, therefore, contended that for the decisions taken before or after said dates, the petitioner cannot be blamed or held responsible. He submitted that the decision to award contract for T.P. Scheme Nos.1 and 2 roads was taken long

before the petitioner took charge as City Engineer on 06.04.1991. He further submitted that the decision to award the same work to the contractor executing works in Zone A and B was also after the petitioner relinquished his charge on 21.12.1991.

In short, it was the contention of the learned advocate for the petitioner that it is a case of no evidence and that the conclusions of the IO are self-contradictory and not supported by evidence on record. He, therefore, submitted that even with the limited scope of judicial review of the departmental action, this Court should interfere with the findings of the IO as upheld by the Authority.

6. It is next contended that the Commissioner of the Corporation showed undue hurry and haste in passing the order of dismissal. He pointed out that for some alleged incident of the year 1990-91, charge sheet was issued for the first time in the year 1993. Oral inquiry was concluded in the year 1995. IO's report was available in October, 1995. The department took nearly 3 years to serve copy thereof to the petitioner along with second show cause notice. The petitioner was called upon to make his representation by notice dated 02.09.1998. The

petitioner promptly replied to the said show cause notice vide his representation dated 05.12.1998. When for alleged incident of 1990, the department took 9 years to issue a notice for taking major penalty decision, it was highly unusual of the Commissioner to have concluded the final decision upon representation made by the petitioner in span of two days. He pointed out that the petitioner made a detailed representation on 05.12.1998 and the Commissioner passed order of his dismissal on 07.12.1998, i.e. in span of just over 24 hours since 06.12.1998 was Sunday. He, therefore, submitted that the representation of the petitioner did not receive adequate consideration by the Commissioner.

7. It was next contended that the Commissioner of Jamnagar Municipal Corporation did not have the authority to pass the impugned order. Learned advocate for the petitioner pointed out that under Section 45 of the Bombay Provincial Municipal Corporations Act, 1949 ('the BPMC Act', for short), the Corporation is an appointing authority for the post of City Engineer. He further pointed out that as per Sub-section (3) of Section 50 of the BPMC Act, the power to take any penal action of removal of a City Engineer on account of any misconduct or for negligence or incapacity lies only with

Corporation. He further submitted that there was no delegation of power in favour of the Commissioner for taking any disciplinary action against the petitioner.

In this regard he drew my attention to resolution No.51 dated 20.11.1998 passed by the General Body of the Jamnagar Municipal Corporation wherein certain powers for initiating action for irregularities and negligence have been delegated in favour of the Commissioner. To the exact wordings of the said resolution, I will refer to a slightly later stage. Suffice it to say that it is the contention of the learned advocate for the petitioner that the said resolution does not empower the Municipal Commissioner to initiate and to conclude disciplinary proceedings for alleged irregularity or negligence in the present case.

8. Learned advocate for the petitioner further submitted that there is no proof of malafide intention on part of the petitioner, even if it is found that there was some error committed by him in recommending the case of the erstwhile contractor for being permitted to abandon the work. He submitted that the same would not amount to misconduct. At best it can be termed as an error of judgment. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of **UNION OF INDIA**

AND OTHERS VS. J.AHMED, reported in (1979) 2 SCC 286 in this regard.

9. It was further submitted that even if it is found that the petitioner has committed some misconduct, in absence of any malafide intention on his part, the penalty of dismissal is grossly disproportionate to the proved charges. He submitted that the respondents ought not to have imposed extreme penalty of dismissal from service in facts of the present case when there is no proof of malafide intention on part of the petitioner.

10. On the other hand, learned advocate Shri J.R.Nanavati for the respondents sought to support the decision of the authorities. He canvased before the Court that the petitioner was found guilty of having committed serious misconduct pursuant to a validly held Departmental Inquiry. The conclusions of the IO as concurred by the Commissioner are on the basis of available evidence on record. He submitted that the same being pure questions of fact, while examining the decision of the employer taken through a domestic inquiry, this Court would not go into the sufficiency of evidence. As long as it is found that there is some evidence on record to substantiate the charge, this Court

would not interfere with the findings of fact arrived at by the competent authority.

11. It was further contended that the petitioner has committed grave misconduct. He had put up a noting before the Commissioner suggesting that the erstwhile contractor of the roads in T.P. Scheme Nos.1 and 2 of the city be permitted to abandon the work. He submitted that the said noting was on the basis of inaccurate and incorrect statements. He, therefore, submitted that the ill-intention of the petitioner is writ large on the face of the record. The petitioner wanted to favour the said contractor who was finding it difficult to complete the work at the rate quoted by him. Simultaneously, the petitioner ensured that the same work is completed through the contractor who was already entrusted the task of construction of works in Zone A and B of the city. He submitted that the said contractor had quoted price which was 22% higher than the tender estimate. Thus, with this action of the petitioner, the Corporation suffered a loss to the tune of Rs.2,50,000/- and odd. It was, therefore, contended that the penalty imposed on the petitioner was just and proper.

12. It was further contended that though in form of oral

evidence, there may have been some suggestions made by the witnesses which may support the case of the petitioner, nevertheless, there was ample evidence on record in the form of documents and materials which would establish the guilt of the petitioner. He submitted that the petitioner had created false basis for permitting the earlier contractor to abandon the work. There was no material to suggest that the work could not be completed on account of various factors such as water logging, traffic etc. or that the same had to be abandoned on account of encroachment. He submitted that when the same work would be completed through a different contractor, shortly after permitting the earlier contractor to abandon the work, it is an ample proof to establish that the petitioner put up inaccurate and misleading note to the Commissioner. Learned senior advocate Shri Nanavati also submitted that the decision to award same contractor to the contractor who was already in charge of the work in Zone A and B of the city was taken by the petitioner without consulting the Commissioner. All these aspects would suggest that the petitioner had definite malafide intention in putting the note before the Commissioner and in allowing earlier contractor to abandon the work without any penalty clause.

13. With respect to the punishment, it was contended that when serious charge of misconduct and doubtful integrity is established, this Court would not interfere with quantum of punishment and suggest different penalty from one imposed by the employer.

14. With respect to delegation of powers, he submitted that under resolution No.51 dated 20.11.1998, the Commissioner had the power to pass the final order of penalty. It was contended that the delegation covers all kinds of works including purchases and other execution of work in which it is found that the officer had committed irregularity or had acted in a negligent manner. In any case, it was contended that eventually, the General Body of the Corporation vide its resolution No.56 dated 15.12.1998 as amended by subsequent resolution dated 30.12.1998, had ratified the action taken by the Commissioner. He places on record copies of these resolutions to substantiate his submissions.

15. Having heard learned advocates appearing for the parties, I find that the charges against the petitioner were sufficiently clear. It was alleged against him inter alia that for allowing a certain contractor to abandon the work as the contractor found unviable on account of

his quoting price which was as much as 9% lesser than the tender estimate, the petitioner caused loss to the Corporation. Simultaneously, the petitioner also ensured that the very same work is concluded through other contractor, who had undertaken the task of construction in Zone A and B of the city. Quotation of the said contract was 22% higher than the tender estimate. It was, thus, the case of the respondents that by this twin action, the petitioner caused substantial monitory loss to the Corporation in excess of Rs.2,50,000/-.

22.03.2006

16. So far as the question of proof of charges leveled against the petitioner is concerned, I find that there was sufficient material on record to permit the IO to conclude that the charges against the petitioner were substantially established. IO has broken up each charge into sub-charges and after discussing at length the evidence on record, came to his conclusions. In this order, I need not go into the details of such conclusions of the IO. Suffice it to say that statements of the witnesses examined by the Corporation were not the only materials before the IO in support of the charges against the petitioner. There were office notings, correspondence

and other documents which the IO took into consideration while holding the petitioner guilty of some of the charges. It is by now well settled that this Court while examining the findings arrived at by the employer through the validly conducted Departmental Inquiry, cannot go into re-appreciation of the evidence and examine the conclusions as an appellate authority. In the decision in the case of **V.RAMANA VS. A.P.S.R.T.C. AND OTHERS**, reported in AIR 2005 S.C. 3417, the Hon'ble Supreme Court taking note of several decisions in this regard, found that the Court should not interfere with the administrator's decision unless it was illogical or found to be suffering from procedural impropriety or shocking to the conscience of the Court. The Hon'ble Supreme Court found that as per the Wednesbury's principle, the correctness of the choice made by the administrator should not be substituted by the Court. In paragraph No.12 of the said decision following observations have been made:

> “The common thread running through in all these decisions is that the Court should not interfere with the administrator's decision unless it was illogical or suffers from the conscience of the Court, in the sense that it was in defiance of logic or moral standards. I view of what has been stated in the Wednesbury's case (supra) the Court would not

go into the correctness of the choice made by the administrator open to him and the Court should not substitute its scope of judicial review is limited to the deficiency in decision-making process and not the decision."

17. In the case of **NIRMALA J.JHALA VS. STATE OF GUJARAT**, reported i 2004 (3) GLR, the Division Bench of this Court made following observations in paragraph No.49:

"From the above decisions, following legal principles can be culled out:

(i)A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.

(ii)The High Court cannot sit in appeal over the decision of the domestic Tribunal. Therefore, where there are some relevant materials, which the authority has accepted ad which material may reasonably support the conclusion that the offer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 of the Constitution of India to review the materials and to arrive at an independent finding on the materials.

(iii)If the inquiry is properly held, the question of adequacy or reliability of evidence cannot be gone into by the High Court. High Court cannot interfere with the penalty if the conclusion of

the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter.

(iv)In case of disciplinary inquiry, technical rules of evidence have no application.

(v)The only consideration that Court has in its judicial review is to consider whether the conclusion is based on evidence and supports the findings or whether the conclusion is based on no evidence. To put it difficulty, the High Court can interfere if the findings are perverse and are not supported by evidence on record at the domestic trial are such to which no reasonably prudent person would have ever reached."

It can thus be seen that while examining the factual conclusions arrived at by the employer during the course of a inquiry, the High Court does not sit in appeal. The Court cannot re-appreciate the evidence as an appellate Court. Whether some relevant materials which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 of the Constitution to review the materials and to arrive at an independent finding on the materials.

18. In view of the above discussion, I find that though the learned advocate for the petitioner is justified in

suggesting that the witnesses examined by the department in support of the charges in terms did not substantiate the allegations made against the petitioner, that by itself would not be sufficient to exonerate the petitioner of the charges leveled against him. Apart from said oral depositions of the witnesses, the IO found that there were documentary evidences which pointed towards the guilt of the delinquent officer. In fact, I am in agreement with the learned advocate for the respondents that some of the statements made by the witnesses were contrary to documentary evidence on record. In that view of the matter, it is not possible to interfere with the factual conclusions of the IO as concurred by the Commissioner.

19. The respondents found that the petitioner ensured that the earlier contractor was allowed to abandon the work of construction of roads in T.P. Scheme Nos.1 and 2 without valid reasons. It was found that the contractor was finding it unviable to implement the works contract since he had offered rates which were 9% lower than tender estimate, the same work was entrusted to the contractor who was given work contractor for other roads in Town Planning Zoe A and B. His offer was 22% higher than tender estimate. It is, therefore, not possible to

concur with the submission of learned advocate for the petitioner that this was a case of no evidence and that the conclusions of the Commissioner were perverse.

20. Learned advocate for the petitioner had submitted that the Commissioner showed undue hurry and haste in taking decision on the representation made by the petitioner. He urged that for alleged acts of misconduct committed by the petitioner in the year 1990, charge sheet was issued in the year 1993. Oral inquiry was concluded in the year 1995. Though IO's report was available in the year 1995, the same was supplied to the petitioner only towards the end of the year 1998. the petitioner made representation thereon on 05.12.1998 and the Commissioner passed her order on 07.12.1998. It may be true that there was some lopsided sense of urgency on part of the Commissioner in passing the final order, however, for want of any specific allegation of malafide, this by itself cannot negate the action taken by the Commissioner. The contention of the learned advocate for the petitioner is, therefore, turned down.

21. The submission of the learned advocate for the petitioner that the petitioner had not committed any misconduct with malafide intention and that at best he

could be said to have acted in negligent manner and that, therefore, the punishment of dismissal from service, was grossly disproportionate also does not hold any validity. If the charges as leveled against the petitioner were found to have been proved, there was an essential element of doubtful integrity. In that view of the matter, to find that the order of dismissal was excessive or disproportionate to the proved charges as to shock the conscience of the Court, is not possible. It is by now well settled that only when the Court finds that the punishment imposed by the employer is shockingly disproportionate to the conscience of the Court, the Court would interfere with the quantum of punishment. In this regard, a reference can be made to the decision of the Hon'ble Supreme Court in the case of **B.C.CHATURVEDI VS. UNION OF INDIA**, reported in in AIR 1996 S.C. 484

22. The crucial question of authority of the Commissioner to impose punishment, however, requires closer scrutiny. As noted earlier, Section 45 of the BPMC Act provides inter alia that the Corporation from time to time may appoint fit persons to be City Engineer, Medical Officer of Health etc. Thus, appointing authority for the post of City Engineer is the Corporation. As per sub-section (3) of Section 50 of the BPMC Act, Transport

Manager or any other officer referred to in sub-section (1) shall be removable at any time from office for misconduct or for neglect of, or incapacity for, the duties of his office on the votes of not less than one half of the whole number of councillors. Sub-section (1) of Section 50 of the BPMC Act in turn refers to the Transport Manager and all officers appointed under Section 45. Section 56 of the BPMC Act pertains to imposition of penalties on municipal officers and servants. Sub-section (1) of Section 56 of the BMPC Act provides inter alia that the competent authority may impose any of the penalties specified in sub-section (2) on a municipal officer or servant if such authority is satisfied that such officer or servant is guilty of a breach of departmental rules or discipline or of carelessness, neglect of duty of other misconduct or is incompetent. Provisio (c) to Section 56 of the BPMC Act further provides that the Commissioner may impose any of the penalties specified in clauses 9a), (b), (c), (d) and (e) of sub-section (2) on any officer appointed by the Corporation other than the Transport Manager or any officer appointed under section 45.

23. Relevant provisions of BPMC Act in this regard may be reproduced at this stage:

“45. Appointment of City Engineer, etc.

(1)The Corporation shall from time to time appoint fit persons to be City Engineer, Medical Officer of Health, Municipal Chief Auditor and Municipal Secretary.

50.Conditions of service of statutory officers of Corporation.

(1)The Transport Manager and all officers appointed under section 45 shall, subject to the provisions of sub-section (2), devote their whole time and attention to the duties of their respective offices and shall not engage in any other profession, trade or business whatsoever.

(2).....

(3)The Transport Manager or any other officer referred to in sub-section (1) shall be removable at any time from office for misconduct of for neglect of, or incapacity for, the duties of his office on the votes of not less than one half of the whole number of councillors.

56.Imposition of penalties on municipal officers and servants.

(1)A competent authority may subject to the provisions of this Act impose any of the penalties specified in sub-section (2) on a

municipal officer or servant if such authority is satisfied that such officer or servant is guilty of a breach of departmental rules or discipline of of carelessness, neglect of duty or other misconduct or is incompetent:

Provided that-

(a)no municipal officer or servant whose monthly salary, exclusive of allowances, [exceeds such amount as may be fixed in this behalf, by a general or special order, by the State Government in the case of each Corporation] shall be dismissed by the Commissioner without the previous approval of the Standing Committee;

(b)any officer appointed by the Corporation excepting the Transport Manager may be suspended by the Standing Committee pending an order of the Corporation, such suspension and the reason therefore being forthwith reported to the Corporation;

(c)the Commissioner may impose any of the penalties specified in clauses (a), (b), (c), (d) and (e) of sub-section (2) o any officer appointed by the Corporation other than the Transport Manager or any officer appointed under section 45;

(d)the Municipal Chief Auditor and the Municipal Secretary may impose any of the penalties specified in clauses (a), (b), (c), (d) and

(e) of sub-section (2) on any officer or servant immediately subordinate to them and drawing a monthly salary [not exceeding such amount as may be fixed by the State Government, by a general or special order, from time to time in case of each Corporation] subject to a right or appeal to the Standing Committee and the Standing Committee may impose any other penalty on any such officer or servant and may also impose any penalty on any other officer or servant immediately subordinate to the Municipal Chief Auditor or the Municipal Secretary.

(2)The penalties which may be imposed under this section are the following namely :-

(a)censure;

(b)with-holding of increments or promotion including stoppage at an efficiency bar;

(c)reduction to a lower post or time-scale, or to a lower stage in a time-scale

(d)fine;

(e)recovery from salary of the whole or part of any pecuniary loss caused to the Corporation;

(f)suspension;

(g)removal from municipal service which does not disqualify from future employment;

(h)dismissal from municipal service which ordinarily disqualifies from future employment.”

23. Combine reading of the above noted provisions would suggest that the appointing as well as disciplinary authority for imposition of major punishment or removal from service for an incumbent holding the post of City Engineer is the Corporation. Appointment of the City Engineer is made by the Corporation in exercise of power conferred in sub-section (1) of Section 45 of the BPMC Act. He can be removed for misconduct or negligence or incapacity by more than half councillors voting for such a resolution. Even Section 56 of the BMPC Act, though makes provisions for imposition of penalties on the officers of the Corporation and authorises, competent authority to pass such penal orders, no power is conferred on the Commissioner or any other authority to remove or dismiss a City Engineer. As noted, Clause (c) of the provisio to sub-section (1) of Section 56 of the BPMC Act though empowers the Commissioner to impose penalties specified in clauses (a), (b), (c), (d) and (e) of sub-section (2) on any officer appointed by the Corporation, the same excludes Transport Manager and any officer appointed under Section 45 of the BPMC Act. The

legislature in the said clause has not included the penalties specified in clause (g) of sub-section (2) of Section 56 of the BPMC Act which are removal from service and dismissal.

Upshot of the above discussion is that as per the provisions contained in the BPMC Act, the order of dismissal against the petitioner could have been passed only by the Corporation and the Municipal Commissioner did not have any authority to pass such an order.

25. The respondents have, however, placed reliance on a resolution dated 20.11.1998 being resolution No.51 of the General Body of the Corporation to substantiate its stand that the Municipal Commissioner was empowered to pass the order of dismissal against the petitioner. The said resolution when translated reads as follows:

> “General Body Resolution No.51: (It is pointed out) By the members regarding the irregularities and negligence committed by the officers in execution of different works and in purchases. Detailed discussion in this regard took place. It was unanimously resolved to give powers to the Commissioner to initiate necessary procedures and to take appropriate steps against the officers when found to have committed irregularities or negligence

regarding purchases.”

It is the case of the respondents that that on the basis of the said delegated powers pursuant to the above mentioned resolution, the Commissioner passed the order of dismissing the petitioner. It was additionally contended that in any case, the action of the Commissioner was subsequently ratified by the General Body of the Corporation vide resolution dated 15.12.1998 as amended by resolution dated 30.12.1998. It was, therefore, the case of the respondents that the Commissioner was competent to pass the order of dismissal and in any eventuality, since the decision of the Commissioner was ratified by the General Body, the impugned order cannot be interfered with.

26. I find that the resolution dated 20.11.1998 was clear and specific. It gave power to the Commissioner to initiate steps to take appropriate action against an officer of the Corporation who is found to has committed either irregularities or acted with negligence with respect to purchases. There is no mention of permitting the Commissioner to initiate and take action against officers for irregularities or negligence in implementation of different works. The resolution

empowered the Commissioner to this limited extent. Admittedly, the alleged irregularities committed by the petitioner were not with respect to the purchases to be made for and on behalf of the Corporation. The alleged irregularities pertain to execution of certain works. General Body of the Corporation for whatever reason limited the delegation of power in favour of the Commissioner only to the extent of initiating and concluding disciplinary action against erring officers when it was found that any irregularity or negligence has been committed in purchases. Similar powers were not granted for inquiring into the conduct of the officers of the Corporation when there were allegations of misconduct in execution of different works. The said resolution, therefore, cannot be pressed in service to empower the Commissioner to take action of dismissing the petitioner from service.

Even the subsequent ratification of the action of the Commissioner would not save the action. I find that the Commissioner, under the provisions of the BPMC Act had no power to remove or dismiss the petitioner from service. The order of dismissal passed by the Commissioner was, therefore, ab initio void. Such an action could not have been subsequently ratified even by

the General Body.

27. In the decision of **MARATHWADA UNIVERSITY VS. SESHRAO BALWANT RAO CHAVAN**, reported in (1989) 3 S.C.C. 132, the Hon'ble Supreme Court found that the Vice Chancellor of University was conferred with the power to regulate the work and conduct of the officers. In such background it was held that the power did not imply any authority in the Vice Chancellor to take disciplinary action against the officers. It was, therefore, held that the action taken by the Vice Chancellor was in contravention of statutory provisions. His action was, therefore, ab initio void and cannot be ratified. It was held that void act of the delegate cannot be cured by ratification of the delegant.

In the case of **BABU VERGHESE AND OTHERS VS. BAR COUNCIL OF KERALA AND OTHERS**, reported in AIR 1999 S.C. 1281, the Hon'ble Supreme Court found that Bar Council of India had passed resolution of extension of the term of the State Bar Council. The said resolution was passed in its regular meeting held after the term of State Bar Council had expired. It was in that background, held that the resolution passed in regular meeting by the Bar Council of India would not relate back to the date of circulation of the resolution and that the extension

granted was invalid.

In the case of **PUNJAB UNIVERSITY VS. V.N.TRIPATHI AND ANOTHER**, reported in (2001) 8 S.C.C. 179, in somewhat different factual background, however, the Hon'ble Supreme Court found the subsequent ratification by the Senate of the legal proceedings instituted by the Registrar would relate back to the time when the action was taken by him, though without authority. It was, however, the case where the Hon'ble Supreme Court found that the Registrar representing the University in all legal proceedings had without authority instituted an appeal against the decision of the trial Court rendered against the University. It was, therefore, found that the action can be said to be in excess of his authority. It was subsequently ratified by the Senate and in such circumstances, the ratification was found to relate back to the time when the action was taken by the Registrar without authority. In the present case, however, I find that the ratio laid down by the Hon'ble Supreme Court in the case of MARATHWADA UNIVERSITY (supra) would govern the present case. The petitioner who was appointed as a City Engineer by the Corporation was dismissed from service by the Commissioner who, as I have concluded hereinabove, had no authority to do so. Her action was,

therefore, ab initio void. The same could not have been ratified subsequently. In that view of the matter, I find that the impugned order is required to be quashed and set aside. The order of dismissal dated 07.12.1998 is, therefore, quashed with all consequential benefits. Rule is made absolute. No order as to costs.

At the request of the learned advocate for the respondents, this judgment shall stand stayed up to 19.04.2006.

(AKIL KURESHI, J.)

*Shitole